

**Neutral Citation No: [2025] NIKB 67**

**Ref: HUM12919**

*Judgment: approved by the court for handing down  
(subject to editorial corrections)\**

**Delivered: 12/12/2025**

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

**KING'S BENCH DIVISION  
(JUDICIAL REVIEW)**

**IN THE MATTER OF APPLICATIONS BY JR338 AND JR339 AND BY  
YAZIM McGIVERN-BELKESSAM ACTING BY HER MOTHER AND NEXT  
FRIEND RÓISE McGIVERN FOR JUDICIAL REVIEW**

**AND IN THE MATTER OF THE DEPARTMENT OF EDUCATION AND  
MINISTER FOR EDUCATION'S SELECTION METHODOLOGY FOR THE  
RAISE PROGRAMME**

**Karen Quinlivan KC & Aidan McGowan (instructed by Harte Coyle Collins) for the  
Applicants JR 338 & JR 339  
Ronan Lavery KC & Conor Leonard (instructed by Finucane Toner) for the Applicant  
Yazmin McGivern-Belkessam  
Tony McGleenan KC & Philip McAteer (instructed by the Departmental Solicitor's  
Office) for the Respondent**

**HUMPHREYS J**

***Introduction***

[1] The applicants in each of these applications for judicial review seek to challenge the selection methodology used by the Department of Education ('DE') to allocate funding for the RAISE programme.

[2] The RAISE programme is aimed at the reduction of educational disadvantage. It has its origins in the New Decade New Approach ('NDNA') agreement which led to the establishment of an expert panel to examine the links between educational underachievement and social disadvantage. This panel published a report entitled "A Fair Start" which was agreed by the Executive in May 2021 and included a recommendation to create a Reducing Educational Disadvantage ('RED') programme. A programme board was established, supported by a Stakeholder Reference Group

(‘SRG’) and this led to further engagement with Queen’s University (‘QUB’) and the Strategic Investment Board (‘SIB’).

[3] The potential reach of the programme was transformed by the Irish government making available some €24M of Shared Island funding towards addressing educational disadvantage in Northern Ireland.

[4] The first and second applicants seek to impugn the selection methodology adopted for the allocation of this funding on the basis that it is unlawful, irrational, in breach of the applicants’ Convention rights and discriminatory. In essence this resolves to two principal claims:

- (i) That geography has been allowed to trump need;
- (ii) That religion has been allowed to trump need.

[5] As a result, it is asserted that the scheme discriminates against pupils in Belfast and Derry and, more widely, against Catholics.

[6] The third applicant advances a case based on the downgrading of Free School Meals Entitlement (‘FSME’) as an indicator of need, which is said to be both irrational and discriminatory.

[7] Furthermore, there is a related but discrete challenge brought by the second applicant to the effective removal of criteria applicable to the funding of cross-cutting initiatives (‘CCI’s’) as part of the RAISE programme.

### *The applicants*

[8] The first applicant, JR338, is a primary school pupil enrolled at a maintained primary school in Belfast. JR339 is enrolled at a maintained post-primary school in Derry. The third applicant, Yazmin McGivern-Belkessam, is a pupil at an Irish language primary school in Belfast.

### *The development of the RAISE programme*

[9] The NDNA document stated:

“The Executive will establish an expert group to examine and propose an action plan to address links between persistent educational underachievement and socio-economic background, including the long-standing issues facing working-class Protestant boys.”

[10] The then Minister for Education announced the appointment of an expert panel, chaired by Dr Noel Purdy, the director of the Centre for Research in Educational Underachievement, on 28 July 2020. The panel included three current or former school principals, the chief executive of the Greater Shankill Partnership and a Durham University professor. This panel provided its final report and action plan, entitled “A Fair Start”, in May 2021.

[11] The following definition of “educational underachievement” was adopted by the authors of the report:

“The term underachievement is used to describe the difference in the average educational attainment of different groups. Strictly speaking, underachievement means that attainment is low, and lower than other comparison groups.”

[12] The report identified a number of ‘key areas’ where action was required. Its Key Area 4 was entitled “Promoting a whole community approach to education” and defined this as:

“... a ‘place-based’ focus that coheres the greatest concentration of effort in those localities with the greatest concentration of educational underachievement.”

[13] The recommendation was:

“DE should co-design a specification for a whole community, partnership approach entitled the ‘Reducing Educational Disadvantage’ (RED) programme. This should be strategic in scale and collaborative in nature, mandating co-design and the building of authentic partnerships between schools and communities using a place-based approach.”

[14] It was also recommended that DE should commission a review of the FSME measure and other potential measures of deprivation. The report noted that FSME was a proxy rather than a direct measure of deprivation. It suffers from certain limitations, including low levels of uptake in some areas and the inability to identify families whose income may be just above the threshold. In accordance with the recommendation, a group of academics from Ulster University was asked to consider this issue.

[15] Implementation of this report’s recommendations included the establishment of the Fair Start Programme Board (‘the Board’) and the creation of the SRG to support the Board. The Board was populated by officials from the DE and other government

departments and agencies whilst the SRG was made up of individuals from across the education, community and youth sectors, including representatives from special schools, the Irish medium sector, teaching unions, and community and voluntary groups. The Terms of Reference for the SRG alluded to:

“Educational underachievement linked to economic disadvantage is an issue that has persisted for many years ... it is generally recognised that underachievement is due to its inextricable link with poverty in society ... This means placing equality of opportunity at the core of everything we do.”

[16] The SRG met eleven times between 2021 and 2023. From the outset the minutes of those meetings refer to a ‘place-based approach’, with each area developing its own bespoke programmes, rather than funding being provided through schools. Steps were taken to gather data which would inform the selection of the relevant areas or ‘localities.’

[17] In January 2022, a policy paper in relation to the RED programme (which ultimately morphed into RAISE) was produced. It recognised that eligibility criteria would be required and noted that data was available in the form of the Northern Ireland Multiple Deprivation Measure (‘NIMDM17’) which ranks the 890 Super Output Areas (‘SOAs’) and is produced by the Northern Ireland Statistics and Research Agency (‘NISRA’). Each SOA consists of approximately 820 households. These rankings are carried out by reference to seven domains – income deprivation, employment deprivation, health deprivation, education skills and training deprivation, access to services, living environment and crime.

[18] The information underpinning some of these domains was identified as suitable indicators to provide comparative data:

- (i) Proportion of school leavers not achieving five or more GCSEs at A\* to C (including English and maths);
- (ii) Pupil absence from school;
- (iii) The proportion of SEN pupils;
- (iv) The proportion of FSME pupils;
- (v) The NIMDM17 income deprivation affecting children; and
- (vi) NIMDM17 health deprivation domain.

[19] In May 2022, maps and data were produced for all areas in Northern Ireland and published in an online mapping tool called Tableau Public for consideration.

[20] In June 2022, various stakeholders were invited to workshops on the development of the RED programme and views were sought as to how this may best meet the challenge of educational underachievement linked to socio-economic disadvantage. In these workshops it was explained that delivery partners would be required to develop and implement a strategic plan for each area and that delivery should be flexible in order to best meet the local need.

[21] By September 2022, a draft options analysis paper based on the potential areas using the six indicators was produced. At that stage a shortlist had been drawn up of potential pilot areas for the programme. A draft Ministerial submission followed in October 2022 but there ensued a substantial period with no Minister in office until February 2024.

[22] A draft business case for funding for the programme of between £500,000 and £2M was drawn up in February 2023 but it was evident that there were likely to be funding pressures.

[23] Contained within an 'options analysis' produced in February 2023 by DE officials was the religious breakdown of pupils living in disadvantaged areas. Across Northern Ireland, some 50.4% of pupils are Catholic, 31.1% Protestant and 18.4% other. In Belfast the figures are around 56% Catholic, 25% Protestant and 19% other. In Derry over 85% of pupils are Catholic and just over 10% Protestant. The claim is made that if you disadvantage Belfast and Derry, you disadvantage Catholics disproportionately.

[24] DE officials gave a presentation to the expert panel on 12 June 2023. The data included in that revealed that across two school years, 2017-18 and 2018-19, some 12,321 school leavers did not attain five good GCSEs including English and maths. Some 2164 of these were from Belfast, a figure representing 33% of leavers, although North and West Belfast showed high levels (at 39% and 38%). This was the highest proportion, marginally more than Armagh Banbridge and Craigavon (32%) and Derry City and Strabane (30%).

[25] In the absence of a Minister, officials engaged with the DE's Top Management Group, chaired by the Permanent Secretary, in September 2023. At this meeting the possibility of adding a seventh indicator, based on crime and anti-social behaviour data from the Youth Justice Agency was discussed.

[26] On 4 October 2023 DE officials shared documentation with a group of academics at QUB in relation to the RED programme design. A meeting took place on 10 January 2024 at which the potential simplification of the selection criteria was

discussed. The proposal foresaw the reduction of eligibility criteria from the seven indicators to GCSE results, FSME entitlement or both.

[27] A 'high level analysis' was carried out using the simplified criteria. The results of this were set out in an email between officials dated 10 January 2024, based on an initial phase involving 25 SOAs:

"Under the proposed 7 criteria, Protestant/Catholic split is 34% PUL/44% CNR. Using GCSE only, the difference between the PUL and CNR remains at 10% pts. Using FSME only, the differential increases to 46% pts in favour of CNR. When using both GCSE and FSME combined, the differential is 31% pts in favour of CNR."

[28] The author of the email commented that he doubted whether the DE would wish to use a single criterion but that the use of two criteria rather than seven was very attractive since it was simple to understand. As against that, he stated:

"Stakeholders main message throughout has been their desire for DE to use a broad range of measures on the understanding that this would be fairer than a narrow range of measures. Whether the additional criteria such as pupil attendance or SEN% or income/health deprivation are useful or 'fairer' is secondary to the perception by stakeholders that a broader range of measures seems fairer."

[29] The email goes on to say:

"The PUL/CNR differential is significant (31%) so in addition to the 2 criteria of GCSE% and FSME%, we would have to come up with a separate rationale for selecting more PUL areas than CNR areas. I am sure is possible but it means (once again) adding to the complexity of the process and no combination of criteria will be perfect."

[30] The proposed methodology which emerged in late 2023 and early 2024 involved three separate steps:

- (i) Ranking Local Government Districts ('LGDs') in order of priority using the benchmark of five or more GCSEs (A\*-C) including English and maths;
- (ii) Shortlisting SOAs using the seven indicators – those with four or more indicators in the top three deciles in Northern Ireland would be shortlisted; and

(iii) The programme localities would be selected by using the total ranking score.

[31] In effect therefore, once the LGDs had been ranked, the most disadvantaged SOA in each LGD would form the basis for the locality selection. This would have led to the selection of the following four SOAs for the pilot scheme:

Crumlin 2 (North Belfast)  
Court 1 (Lurgan)  
Ballee (Ballymena)  
East (Strabane)

[32] It was proposed that additional SOAs from the same geographical area could be added within each locality to increase the number of pupils who stood to benefit. In time, and with additional resource, the programme could be extended to the other LGDs with lower priority.

[33] In parallel with these developments, officials were in discussions with their counterparts in the Irish Department of Education and the Department of the Taoiseach from around January 2023 in relation to the potential availability of Shared Island Funding. By January 2024 agreement was reached in principle that some €24M of funding would be made available over two years to address educational underachievement. This was transformative in respect of the programme's potential. A modest pilot scheme was no longer the limit of ambition but a full scale roll-out could be planned.

[34] As a result, the SIB was engaged to support the DE in terms of developing a deliverable programme. The SIB is a company limited by guarantee, owned by the Executive Office, which supports departments and agencies with investment planning and delivery. It has a range of specialist advisers, available to public bodies, to provide expert advice on a given project. In this case, Joy Hadden was appointed to lead on behalf of the SIB and an Operational Partnership Agreement was put in place. Included in the range of key work areas was the critical review of selection methodology.

[35] On 3 February 2024, following the restoration of devolution, Paul Givan MLA was appointed as Minister for Education. He swiftly received a Ministerial submission, dated 6 February, in respect of the RED programme. This involved a recommendation to accept the Shared Island Funding and identified the following as the principles guiding the selection of localities:

- (i) Data-informed on the basis of a range of indicators;
- (ii) Geographical spread across Northern Ireland;
- (iii) Balance in terms of religious background and political belief;

(iv) Inclusion of rural localities.

[36] SIB was consulted on the proposed selection methodology and it drafted a new paper dated 14 March 2024, setting out a two stage selection process:

- (i) Shortlisting – to identify SOAs that are disadvantaged by the measure of being in the 30% most disadvantaged in four or more of the seven indicators;
- (ii) Ranking – by the use of a weighting given to the educational indicators in each of the shortlisted SOAs.

[37] Exchanges with DE officials ensued, including an examination of both a regional and a non-regional approach. The former would result in one locality being selected in each LGD whilst the latter would simply rank the SOAs in score order. These were described as the “regional approach” and the “disadvantage approach.” The regional approach would necessarily entail a reduction in funding to Belfast and Derry since socio-economic disadvantage was particularly to be found in these urban areas. Consideration was also given to the weightings to be applied to particular indicators.

[38] Meanwhile, on 21 March 2024 the report from Ulster University in relation to the FSME measure was published. It stated:

“In summary, FSME can be considered a reliable, valid, efficient and widely used proxy for socio-economic disadvantage ... we did not identify a clearly superior indicator that could easily be adapted for the day-to-day operational needs of the DE. Therefore, it is not currently recommended that the DE replace FSME as their primary indicator of socio-economic disadvantage.”

[39] A further Ministerial submission was provided on 18 April 2024, including a paper on the proposed methodology. This was followed by a presentation on 23 April which outlined in summary:

- (i) 14 place-based localities were ranked on need with Dungannon added as a 15<sup>th</sup> locality to ensure that the programme operated in each LGD;
- (ii) A large number of SOAs were shortlisted in both Belfast and Derry;
- (iii) Belfast would be split into four different areas;



- (iv) In order to facilitate the regional approach, only those SOAs with a ranking score below 700 (for Belfast) or 740 (for Derry) would be included alongside the core SOAs.

[40] Following this meeting and presentation, the Minister's SPAD, Richard Bullick, emailed DE officials to ask if it would be possible to see how different areas would look if assessed solely on the basis of GCSE results. The following day a paper was produced which provided this data.

[41] This paper concluded that the proposed approach would result in a number of different outcomes. Four localities - Portadown, Ards Peninsula, Antrim and Armagh would become eligible at the expense of Enniskillen, Newry, Larne and Newtownards. If the programme was to have a presence in each LGD then Enniskillen and Newry would require to be promoted at the expense of Armagh and Strabane. Within Belfast and Derry the make-up of the most disadvantaged SOAs would change significantly. For example, the most disadvantaged SOA in Northern Ireland under the seven indicators, Crumlin 2, would drop out altogether. Botanic 2 would become the new most disadvantaged SOA, having previously not been ranked.

[42] On 2 May 2024 the Minister received a submission outlining the different approaches and their outcomes. It stated explicitly that the policy intent was to include programme delivery in each LGD. It was recognised that ranking solely on need would have created a programme predominantly focused in Belfast and Derry. To facilitate the regional approach, therefore, only areas in Belfast and Derry with ranking scores below 700 and 740 respectively would be included alongside the core SOAs. It also referred to the different selection methodologies tried and tested during the development process.

[43] A meeting took place between the officials and the SPAD on 14 May wherein a shortlisting approach based on the four educational-only indicators was discussed and further data was produced by way of an addendum to outline this.

[44] On 23 May 2024 the SPAD sent an email stating:

"Three options have been considered. There are pros and cons with each option. Ideally we would have data about attainment at Key Stage 1, 2 and 3 to help inform decisions about education disadvantage. However we are left with GCSE results as the only indicator of educational achievement. The other "education" measures are unsatisfactory as a measurement of achievement rather they may correlate to disadvantage. The other measures do not appear to be measures of educational achievement at all. On this basis I would suggest we go for the GCSE only methodology."

[45] On 24 May 2024 the Minister replied:

“I concur with the assessment as outlined by Richard. The department will proceed on that basis.”

This approach was intended to focus the issue of socio-economic disadvantage at the shortlisting stage and educational underachievement at the point of ranking.

[46] There followed exchanges between officials about the particular position of North Belfast. On 3 June 2024 Peter Hutchinson stated:

“Having looked at the maps and the data, I think it would be appropriate to include Duncairn (1 and 2) and New Lodge (1, 2 and 3) within the North Belfast locality. This is based on the fact that they are within close proximity of the set locality, have similar characteristics than existing, were previously within the scheme and provide an appropriate quantum of support for North Belfast. I think exclusion would be confusing for those on the ground. Within the entire methodology there needs to be a level of flexibility to ensure there is both a set area but also a periphery of interest. The key point at this stage is ensuring that all community partners are involved in the co-design process to design interventions with the greatest reach across the locality, albeit with the greatest impact of funding and targeting where this is most required. Any issues with this approach happy to discuss – especially if this creates potential for challenge.”

[47] On 4 June 2024 John McConnell replied:

“I’ll add those to our maps and programme data. In terms of creating potential for challenge, worth noting that as potential core areas in North Belfast Glencairn and Crumlin rank higher on GCSE than New Lodge, while those and also Water Works rank higher than Duncairn. Ballynafeigh in South Belfast is also higher than Duncairn.”

[48] The methodology ultimately approved by the Minister entailed:

- (i) Shortlisting of SOAs on the basis of those in the 30% most disadvantaged in Northern Ireland for four or more of the seven indicators;
- (ii) Ranking of the shortlisted SOAs using the GCSE indicator only;

- (iii) The most disadvantaged are described as the 15 'core' SOAs;
- (iv) Shortlisted SOAs neighbouring each 'core' SOA ('areas of influence') were added to form localities;
- (v) Strabane and Armagh, both in the top 15, were removed in favour of Newry and Enniskillen to allow at least one locality in each LGD;
- (vi) In Belfast, any SOA that was in the 25 lowest in Northern Ireland in terms of GCSE outcomes was included, then neighbouring SOAs added to form localities, with 35 SOAs in total involved;
- (vii) In Derry, a single shortlisted SOA in the Waterside would be added along with others in Creggan and Shantallow.

[49] The application of the selection methodology resulted in the following 15 core SOAs, the full list of which appears at Annex 1 to this judgment.

[50] The term 'location' simply refers to the whereabouts of each of the selected SOAs. There are 15 core SOAs across the 11 LGDs in Northern Ireland. The split of Belfast into its four geographical areas resulted in a total of 18 selected localities.

[51] Shortlisted SOAs that neighbour each core SOA (areas of influence) were added to form localities in each LGD. The expressed aim of this approach was to form a coherent locality and to reach as many children and young people as possible. The DE stressed that there was some flexibility around the area of influence for each locality.

[52] When the method of ranking changed to GCSE attainment only, the proposed figures of 700 and 740 as thresholds for Belfast and Derry, which were based on the total of all seven indicators, ceased to be relevant.

[53] In Belfast, a GCSE rank of 25 or below was used to identify the SOAs which had the lowest level of GCSE achievement. To these SOAs were added neighbouring shortlisted SOAs to form areas of influence. Some flexibility in the selection of areas of influence in Belfast was used, as was illustrated by the issues identified in relation to North Belfast. The total number of SOAs included in the programme in Belfast is 40, with 13,341 pupils potentially benefitting, representing 27% of the total number of pupils.

[53] In Derry, SOAs with a GCSE rank of 100 or below were included as core SOAs. Neighbouring shortlisted SOAs were then added to form areas of influence. The total number of SOAs in Derry is 13, with 5,736 pupils potentially benefitting, being 12% of the total number of pupils.

[54] The final list of SOAs included as areas of influence appears at Annex 2 to this judgment.

[55] The DE's deponent describes the rationale behind the approach as follows:

"The selection of localities ... was based on a methodology that included a desire to have a regional programme, to invest in disadvantage across Northern Ireland and embed collaborative working in a high number of localities that can be a long-lasting legacy after funding ends ... the intention was to achieve a balance in terms of the perceived political background of localities, an urban-rural split and a variety of scales of locality. It used the broad range of indicators outlined above to shortlist Super Output Areas and prioritised investment in those areas with the lowest levels of educational attainment."

[56] The DE stresses that the only objective data available to it which represents an indicator of educational attainment in children of compulsory school age are the GCSE results. Ongoing industrial action involving teachers has meant that the data gathered in relation to younger children is generally unavailable.

[57] On 29 May 2024, it was agreed that the RED programme would be re-named RAISE. The programme was announced by press release on 31 May with the final list of localities published on 6 June.

[58] A list of schools was produced which was interpreted by some as a list of schools which were to benefit from the RAISE programme. In fact, the list represented those schools with ten or more pupils living in the selected localities. The appearance of fee paying preparatory schools on the list caused some consternation but this came about as a result of the misinterpretation.

[59] A series of meetings and workshops was held beginning in June 2024 with schools and representatives from the educational sector in advance of the formal launch of the programme on 16 October 2024. Individuals were appointed as locality coordinators to oversee the development of the Strategic Area Plans. In terms of governance, the Minister set up an Advisory Forum and a Programme Board.

[60] In November 2024, the Assembly passed a motion regretting the exclusion of many schools in deprived areas from the RAISE programme and calling on the Minister to review the criteria. In his response, the Minister had sought to explain that this was a place-based programme, rather than one which sought to target particular schools.

[61] The rationale behind the methodology used, and the data underpinning it, were set out in a document published on the DE's website on 2 December 2024. This set out very clearly the approach adopted by the Minister, the indicators used, the effect upon Belfast and Derry and the fact that only the GCSE criterion was applied for ranking. The adding of neighbouring shortlisted SOAs to the core SOAs is explained and is the availability of a degree of flexibility around each locality.

[62] It is also evident that a series of meetings have taken place between departmental officials from the DE in Northern Ireland and its equivalent in Ireland under the guise of the Addressing Disadvantage in Learning and Research Board ('ADLRB'). This followed the signing of a Memorandum of Understanding ('MOU') on 30 August 2024 setting out the arrangements for the delivery of the programme.

### *Cross-cutting initiatives*

[63] Cross-cutting initiatives (CCIs) formed a separate element of the RAISE programme, unconnected to the funding based on localities. Discussions in relation to the approach to this part of the programme took place between officials, the SPAD and the Minister in May 2025. The Minister decided not to adopt the locality approach in relation to these projects but rather opened up applications to all schools.

[64] On 30 May 2025 the first seven specific projects were announced:

- (i) Supporting Effective Professional Learning Clusters Programme to support collaborative professional learning clusters in partnership with higher education institutions;
- (ii) Online Science of Learning Programme to deliver an online professional learning programme for teachers on the science of learning;
- (iii) Reading with AI research study evaluating how AI tools can support literacy;
- (iv) Learning to Code Schools Programme to allow pupils to improve their digital literacy;
- (v) Primary Literacy and Numeracy/Transitions Support Programme to support schools to run primary literacy and numeracy revision and support classes during the Halloween and Easter holidays and after schools for pupils preparing to transfer to post-primary schools;
- (vi) Holiday Revision Support Programme to support schools to run revision schemes during the Halloween and Easter holidays for pupils preparing for public examinations; and
- (vii) Alternative Education Models Pilot to include research into alternative models of education and a small scale pilot testing potential approaches.

[65] In the case of a CCI programme, it was proposed that expressions of interest would be sought from all schools interested in participating (save for independent and preparatory schools). The selection of schools would then take place on a case-by-case basis.

[66] The Reading with AI project was launched on 2 June 2025, aimed at targeting 17,072 pupils in both primary and post-primary schools. A total of 325 schools, with a total of 35,125 pupils, expressed an interest. It was therefore necessary to engage a selection process and the DE chose to use a random stratified sample. This entailed schools being divided equally into three groups according to the percentage of FSME pupils in the whole school (high, medium and low). The same process was adopted to divide the schools into three equal groups according to its number of SEN pupils (high, medium and low). The list of schools in each strata was then randomly ordered and 168 selected.

[67] The Holiday Revision Support Programme has a budget of £400,000 and 70 schools expressed an interest in providing their pupils with a revision scheme during the Hallowe'en holiday 2025. All schools were able to be included, and each were informed that those who need additional assistance, particularly those from lower income backgrounds, should be targeted.

[68] The intention is that the DE will assess the evidence of the impact of each of the CCIs across a range of pupils in accordance with the published RAISE Evaluation Framework.

### *The individual cases*

[69] JR338 lives in the Finaghy 2 SOA. It is ranked in the 8<sup>th</sup>, 9<sup>th</sup> or 10<sup>th</sup> decile in each of the seven indicators. It was not therefore shortlisted.

[70] In terms of GCSE attainment, Finaghy 2 is ranked 869 out of 890, meaning that only 21 SOAs in Northern Ireland have better GCSE outcomes. It is neither an area of socio-economic deprivation nor of educational underachievement.

[71] The school attended by JR338 is in the Andersonstown 2 SOA which was also not selected for inclusion in the programme. The school draws pupils from a number of different SOAs, particularly Ladybrook 1, 2 & 3 and Andersonstown 1 & 2, none of which were selected in the programme. These areas were not sufficiently disadvantaged to make the RAISE shortlist. In terms of GCSE attainment, Ladybrook 1 was ranked 825 (out of 890), Andersonstown 1 was 490 and Andersonstown 2 ranked at 425.

[72] JR339 lives in the Beechwood SOA in Derry. It was ranked in the top three deciles for the SEN, FSME and health indicators but was not shortlisted as it was not

in the top three for four or more indicators. Some 188 SOAs were ranked as more deprived across Northern Ireland.

[73] The GCSE educational achievement indicator revealed that Beechwood was in the sixth decile, and therefore above average in Northern Ireland.

[74] JR339 attends a post-primary school which has over 40% of its enrolment living in the Derry/Londonderry locality. The school has been involved in the programme stakeholder engagement, including meetings of the locality reference group.

[75] The third applicant, Yazmin McGivern-Belkessam, lives in the Upper Springfield 1 SOA which was shortlisted as it was in the top three in four indicators. It ranks 140 out of 890 in educational attainment, based on GCSE results, which puts it in the second decile, and it was not therefore selected for the programme.

[76] Of the various SOAs making up the pupil enrolment at this school, only Whiterock 2 (at 86) ranked in the top 100 most underachieving SOAs in Northern Ireland.

### *The counterfactual methodology*

[77] The DE has carried out an analysis of what would have happened had the impugned selection methodology not been used but the approach contended for by the applicants had been adopted.

[78] Finaghy 2 ranks at 854 in the NIMDM17, 875 in the education, skills and training domain and 858 in the income domain. Its GCSE attainment ranking is 869 and its FSME indicator ranking is 824. It is therefore one of the least deprived areas socio-economically and one of the highest achieving educationally. It would not have been shortlisted, or selected, for the RAISE programme on any of the proposed methodologies.

[79] Upper Springfield 1 ranks at 82 in the overall NIMDM17, at 65 in the education, skills and training domain and 538 in the income domain. Given that only 15 core SOAs were ultimately selected, using any of these criteria would not have advantaged Upper Springfield 1.

[80] It was shortlisted on the basis of the approach adopted by the RAISE programme. Upper Springfield 1 ranks 67 on the FSME indicator and therefore if this had been used for selection, this SOA would still not have been successful.

[81] Beechwood ranks at 257 in the overall NIMDM17, 196 in the education, skills and training domain and 429 in the income domain. If an alternative approach had been adopted, it would still not have been selected as a core SOA.

[82] It ranks 189 on the FSME indicator and therefore it would not have been selected as a core SOA if this were the only criterion adopted. Beechwood is not significantly deprived on a socio-economic analysis nor is it amongst the poorest performing SOAs on the basis of educational attainment.

### *The role of the court*

[83] It is trite law that the intensity of review applied by a court exercising its supervisory jurisdiction will be fact and context-specific. The respondent in this case contends that questions relating to the allocation of resources in an area such as education should admit only of the lightest touch rationality review.

[84] In *Department of Justice v Bell* [2020] NI 180, Gillen LJ set out a number of principles:

- “(a) Normally, the question whether the Government allocates sufficient resources to any particular area of state activity is not justiciable.
- (b) A decision as to what resources are to be made available often involves questions of policy and certainly involves questions of discretion. It is almost invariably a complex area of specialized budgetary arrangements taking place in the context of a challenging economic environment and major cutbacks on public spending. There should be little scope or necessity for the Court to engage in microscopic examination of the respective merits of competing macroeconomic evaluations of a decision involving the allocation of (diminishing) resources. These are matters for policy makers rather than judges: for the executive rather than the judiciary.
- (c) The greater the policy content of a decision, and the more remote the subject matter of a decision from ordinary judicial experience, the more hesitant the Court must necessarily be in holding a decision to be irrational. Where decisions of a policy-laden nature are in issue, even greater caution than normal must be shown in applying the test, but the test is sufficiently flexible to cover all situations.
- (d) Provided the relevant government department has taken the impugned decision in good faith,



rationality, compatibly with the express or implied statutory purpose(s), following a process of sufficient inquiry and in the absence of any other pleaded public law failing, such a decision will usually be unimpeachable.

- (e) However, when issues are raised under arts 5 and 6 of the European Convention on Human Rights and Fundamental Freedoms as to the guarantee of a speedy hearing or of a hearing within a reasonable time, the Court may be required to assess the adequacy of resources, as well as the effectiveness of administration.
- (f) Nonetheless in general a court is ill-equipped to determine general questions as to the efficiency of administration, the sufficiency of staff levels and the adequacy of resources.
- (g) There is a constitutional right of access to justice and access to the courts.
- (h) Powers ought to be exercised to advance the objects and purposes of the relevant statute."

### *The grounds of challenge*

[85] The applicants seek to impugn the selection methodology adopted on the following grounds:

- (i) It frustrates the aims of the policy;
- (ii) It unlawfully discriminates against the applicants;
- (iii) It breaches the applicants' ECHR rights;
- (iv) The decision to adopt it was substantively irrational;
- (v) The process which led to its adoption was procedurally irrational; and
- (vi) It was infected by procedural unfairness by virtue of inadequacy of reasons.

#### *(i) Frustration of the aims of the policy*

[86] The well-known line of authority from *Padfield v Minister of Agriculture* [1968] 2 WLR 624 establishes that statutory powers must be used to promote the policy and objectives of the legislation. In the instant case, there is no statutory scheme underpinning the RAISE programme. The applicants' case is therefore a variant of *Padfield* in that they say the selection methodology adopted frustrates and departs from the stated aims of the programme, namely to tackle educational underachievement linked to socio-economic disadvantage:

[87] For over 50 years, the principle in *Padfield* has been applied and considered by the courts in the United Kingdom. It has frequently been cited at the highest level. In *R v Secretary of State for the Environment, Transport and the Regions, Ex p Spath Holme Ltd* [2001] 2 AC 349 Lord Bingham of Cornhill commented:

“... no statute confers an unfettered discretion on any minister. Such a discretion must be exercised so as to promote and not to defeat or frustrate the object of the legislation in question ... The object is to ascertain the statutory purpose or object which the draftsman had in mind when conferring on ministers the powers set out in section 31.” (at 381)

[88] The nature of the court's role was considered in *R (Palestine Solidarity) v Secretary of State for Housing, Communities and Local Government* [2020] UKSC 16. Lord Wilson stated:

“... the court must analyse the power by construing the words by which it was conferred on him in their context. From the words in their context Parliament's purpose in conferring the power can be identified; and the purpose will illumine its scope.” (para [1])

[89] Belatedly, during the hearing of the application, the applicants referred to Article 115 of the Education and Libraries (Northern Ireland) Order 1986 which permits the DE to pay grants for the purpose of the provision of educational services and research, and the general duty imposed on the DE to promote the education of the people of Northern Ireland by Article 3 of the Education Reform (Northern Ireland) Order 1989.

[90] There is, of course, no dispute that the DE has the power to create and administer a scheme of the type created by the RAISE programme. There are, however, no limits imposed on the payments of sums by the statutory provisions cited. In order to advance a *Padfield*-type case therefore, the applicants seek to elevate

recommendations of the Fair Start report to those setting out the parameters of a statutory scheme.

[91] No case was cited to the court which supported the proposition that the *Padfield* principle extended beyond the exercise of statutory powers into the realm of Ministerial decisions on the development of funding programmes such as the one in issue in this case, based on the reports of experts and consultants.

[92] Launching programmes, announcing initiatives and making of aspirational statements by Ministers or Departments do not give rise to the same requirements as the exercise of discretion created by statutory powers. Therefore the *Padfield* principle has no part to play in the legal analysis in this case. To seek to extend it in the manner asserted by the applicants would represent considerable judicial overreach into the domain properly occupied by executive decision making.

[93] Even if it were otherwise, the respondent says that the methodology ultimately adopted by it was to use the seven indicators to shortlist the SOAs, which demonstrably included criteria related to socio-economic disadvantage. It then used one of the indicators, GCSE results, to select from the shortlist. This second stage did not use any data associated with socio-economic disadvantage but focussed exclusively on educational attainment. For the reasons outlined, this represented the only objective and robust dataset on this issue available to the DE.

[94] In order to make the shortlist, an SOA had to be in the top 30% most disadvantaged in at least four of the indicators. Without that identified level of disadvantage in an SOA, it could not be selected for the programme.

[95] It is important to recognise that schools (as opposed to localities) receive direct funding from the DE through the Targeting Social Need factor in the Common Funding Formula. This provides for additional funding for schools based exclusively on the number of FSME pupils attending. The RAISE programme does not therefore exist in isolation but provides for an alternative, area based, approach to funding.

[96] The decision to include at least one locality in each LGD was justified by the Minister on the basis that the programme ought to be Northern Ireland-wide, albeit that this would cause some disadvantage to the main urban areas. This was a policy decision which he was entitled to arrive at.

[97] Even if this were a *Padfield* case with the Minister obliged to act in accordance with statutory powers, the case has not been made out that the chosen methodology frustrates the purpose of the scheme. It was never the case, applying the recommendations of the Fair Start report, that socio-economic deprivation would be sole qualifying criterion for funding. The applicants complain that “geography has trumped need” but it is a consistent feature of the analysis that a Northern Ireland wide, place based programme was sought to be designed.

[98] There can be no doubt that a different scheme could have been developed. It is, however, no part of the court's role to critique policy development. The court only seeks to identify whether decision making is lawful and decisions are rational. Given the stated nature of the scheme, and the presence of educational underachievement throughout Northern Ireland, it could not be said that by ensuring that there were localities in each LGD the DE was acting in a manner which frustrated the scheme. Indeed, as the scheme develops, and its work is evaluated through the use of the framework, evidence will be gathered to reveal whether, and to what extent, its goals are being achieved.

[99] The second aspect of the applicants challenge under this heading relates to the choice of the sole criterion of GCSE attainment for ranking shortlisted SOAs. It is claimed that this decision failed to give proper weight to the FSME criterion and ran counter to the stated objectives of the scheme.

[100] The FSME indicator does, of course, play a role in the shortlisting of SOAs alongside other measures of deprivation. It is also the key trigger for schools' entitlement under the Common Funding Formula's Targeting Social Need element.

[101] In this case, having sought advice, and weighed up the relative advantages and disadvantages of alternative methodologies, the Minister elected to use the GCSE criterion as the sole means of selection from the shortlist. On his analysis this is, after all, a programme to target educational disadvantage and GCSE results provide the best available objective data on the issue. This represents classic policy development, informed by advice from officials and others.

[102] This ground of challenge therefore fails.

*(ii) Discrimination*

[103] The first and second applicants, JR338 and JR339, make the case that the methodology breaches section 76 of the Northern Ireland Act 1998 ('NIA').

[104] This legislative provision states:

“(1) It shall be unlawful for a public authority carrying out functions relating to Northern Ireland to discriminate, or to aid or incite another person to discriminate, against a person or class of person on the ground of religious belief or political opinion.

(2) An act which contravenes this Section is actionable in Northern Ireland at the instance of any person adversely affected by it; and the court may –

- (a) grant damages;
- (b) subject to subsection (3), grant an injunction restraining the Defendant from committing, causing or permitting further contraventions of this Section."

[105] Section 98(4) of the NIA defines discrimination in this context:

"For the purposes of this Act, a provision of an Act of the Assembly or of subordinate legislation discriminates against any person or class of persons if it treats that person or that class less favourably in any circumstances than other persons are treated in those circumstances by the law for the time being in force in Northern Ireland."

[106] It is clear therefore that section 76 is concerned only with direct discrimination. It does not seek to prohibit indirect discrimination. Importantly, the applicants in this case have eschewed any claim based on indirect discrimination.

[107] Although section 76(2) provides for specific remedies for breach of the non-discrimination requirement, it is clear from *Re Downes' Application* [2009] NICA 26 that the statutory provision may also be relied upon in applications for judicial review, following *Re Duffy's Application* [2006] NICA 28. A relevant policy or decision may therefore be impugned in public law if it gives rise to a breach of section 76.

[108] The applicants' pleaded case is that:

- (i) The methodology results in RAISE localities being disproportionately located in LGDs with a majority of people identified as Protestant or other and this discriminates against Catholics;
- (ii) The Minister's decision to use GCSE attainment as the sole criterion for selection from the shortlist discriminates against Catholics;
- (iii) Adopting a regional approach, rather than ranking SOAs on the basis of socio-economic deprivation, and requiring SOAs in Belfast and Derry to suffer greater disadvantage, serves to discriminate against Catholics;
- (iv) Seeking to achieve a 'balance' in terms of perceived political background of localities is similarly discriminatory.

[109] In *Downes*, the applicant challenged the decision to appoint a Mrs McDougall as the Interim Victims Commissioner claiming, inter alia, that it constituted a breach of section 76. Kerr LCJ analysed the legal position as follows:

“Whether discrimination has occurred is conventionally addressed by examining the treatment that an actual comparator received or that which a notional comparator would have been accorded and relating this to the treatment meted out to the person alleging discrimination. In this case, Girvan J did not explicitly identify a comparator, although one may suppose that he had in mind the political parties other than the DUP who were not consulted about possible nominees for the post. But here one must concentrate on the act of discrimination alleged. It appears to us that the actual discrimination alleged is the appointment of Mrs McDougall, rather than the decision to consult only the DUP of all the political parties who might have expected to be involved in discussion about the appointment. A failure to consult some political parties while giving privileged access to one party on the issue of an appointment such as this could involve a breach of section 76 but the appointment of Mrs McDougall, although consequent on the consultation of the DUP, is not in our judgment an act of discrimination under section 76. Put simply, the failure to consult other political parties may have involved discrimination but the appointment of Mrs McDougall did not. She was not aligned to any political party and there is no discernible advantage to the DUP from her actual appointment (as opposed to being consulted about it). There is likewise no corresponding disadvantage to any of the other political parties by the appointment of Mrs McDougall. We do not consider therefore that breach of section 76 has been established.”  
(para [57])

[110] As the House of Lords made clear in *R v Birmingham City Council ex p Equal Opportunities Commission* [1989] 1 AC 1155, the intention or motivation of the alleged discriminator is irrelevant.

[111] In the context of sex discrimination in the employment field, Lord Nicholls explained in *Shamoon v Chief Constable of the RUC* [2003] UKHL 11:

“When the claim is based on direct discrimination or victimisation, in practice tribunals in their decisions normally consider, first, whether the claimant received less

favourable treatment than the appropriate comparator (the 'less favourable treatment' issue) and then, secondly, whether the less favourable treatment was on the relevant proscribed ground (the 'reason why' issue). Tribunals proceed to consider the reason why issue only if the less favourable treatment issue is resolved in favour of the claimant. Thus, the less favourable treatment issue is treated as a threshold which the claimant must cross before the tribunal is called upon to decide why the claimant was afforded the treatment of which she is complaining." (para [7])

[112] However, Lord Nicholls goes on to say that, in many cases, the two questions may be intertwined and where there are disputes around the appropriate comparator it may be prudent to answer the 'reason why' question first.

[113] The key question to ask in this case is whether the applicants, or a class of persons represented by the applicants, have been subjected to less favourable treatment on the grounds of their religious belief than an actual or hypothetical comparator (no case having been advanced in relation to political opinion).

[114] On the 'reason why' question, the unlawful discrimination ground need not be the sole reason for the less favourable treatment. As Lord Nicholls said in *Nagarajan v London Regional Transport* [2000] 1 AC 501:

"... discrimination requires that racial grounds were a cause, the activating cause, a substantial and effective cause, a substantial reason, an important factor. No one phrase is obviously preferable to all others, although in the application of this legislation legalistic phrases, as well as subtle distinctions, are better avoided so far as possible. If racial grounds or protected acts had a significant influence on the outcome, discrimination is made out." (at 513)

[115] In their pleaded case, the applicants have not identified any relevant comparator, whether actual or hypothetical. They simply say that the scheme "discriminates against Catholics" without identifying any less favourable treatment meted out to them as individuals.

[116] This is not surprising on the basis of the evidence. No matter what criteria were applied in the selection of SOAs, Finaghy 2 and Beechwood would not have been selected as core SOAs. Neither JR338 nor JR 339 have suffered any less favourable treatment as a result.

[117] Instead, the case is advanced on behalf of a “class of persons”, namely Catholics, using Protestants as the relevant comparator. I leave to one side for the moment the question as to whether these applicants are entitled to bring such a representative claim.

[118] The statistical data produced by the DE reveals that there are 48,674 school pupils in the selected localities. 25.4% of these pupils are Protestant and 49.3% Catholic, with 25.3% being other. Across Northern Ireland, there are 341,894 pupils, 28.6% of which are Protestant, 49.7% Catholic and 21.6% other. This does not, on its own, support any conclusion that Catholics, as a class, have been subjected to less favourable treatment on the grounds of their religion.

[119] To counter this, the applicants say that Catholics are more likely to live in areas of social deprivation and therefore the RAISE programme ought to significantly advantage them rather than result in the outcome set out above.

[120] The applicants place significant emphasis on the statement made by the DE in these proceedings that:

“the intention was to achieve a balance in terms of the perceived political background of localities, an urban-rural split and a variety of scales of locality.”

[121] The downgrading of Belfast and Derry is said to have been a product of this desire to achieve a balance and that, in turn, has caused disadvantage to Catholics who live in these urban areas in significant numbers.

[122] However, the reference to achieving balance refers to the policy decision made to ensure that the programme was Northern Ireland-wide and not limited to specific areas. This decision clearly had consequences for the urban areas, which were identified and recognised, but this does not mean that those consequences were on the grounds of religious belief.

[123] The applicants then say that the position was exacerbated by the decision to use GCSE attainment as the sole criterion for selection since, on the evidence, Catholics outperform Protestants at GCSE. Again, whilst any decision involving the selection methodology was bound to have consequences, this does not equate to direct discrimination. In a programme designed to target educational underachievement, it is not surprising that those areas of relatively high attainment would be less likely to be included. This form of discrimination has nothing to do with religious belief.

[124] It is important to recall the methodology used to select the SOAs which are to benefit from RAISE funding. This begins with the seven indicators of deprivation for the purposes of shortlisting, then applies GCSE attainment for ranking. Certain thresholds were applied to achieve a regional approach, then areas of influence



selected to create localities, using a community based approach. None of this suggests that decisions were made “on the ground of religious belief.” Some of the decisions made during the methodology selection process may have had an impact on the religious make up of those who will ultimately benefit from the scheme funding but that is a very different thing from establishing that decisions were made on the grounds of the religious belief of certain individuals or a group of individuals. In *Shamoon* terms, the applicants have not established that the ‘reason why’ question can be answered by reference to the proscribed ground.

[125] On proper analysis, the section 76 breach has simply not been established on the evidence in this case.

*(iii) The ECHR claim*

[126] The applicants also contend that the chosen selection methodology breaches their rights under article 2 Protocol 1 ECHR (‘A2P1’) and article 8 ECHR when read in conjunction with article 14, contrary to section 6 of the Human Rights Act 1998 (‘HRA’).

[127] Section 7 of the HRA provides:

“(1) A person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by section 6(1) may –

- (a) bring proceedings against the authority under this Act in the appropriate court or tribunal, or
- (b) rely on the Convention right or rights concerned in any legal proceedings,

but only if he is (or would be) a victim of the unlawful act.”

[128] By section 7(3), where proceedings are brought on an application for judicial review, the applicant is to be taken as having sufficient interest in relation to the unlawful act only if he is, or would be, a victim of that act.

[128] As McCloskey LJ observed in *Re Taylor’s Application* [2022] NICA 8:

“The ECHR did not, therefore, envisage the bringing of an *actio popularis* for the interpretation of the rights set out therein or permit individuals to complain about a provision of national law simply because they considered, without having been directly affected by it, that it might contravene the convention. It was, however, open to a

person to contend that a law violated his rights, in the absence of an individual measure of implementation, if he was required either to modify his conduct or risk being prosecuted or if he was a member of a class of people at “real risk” of being directly affected by the legislation.” (para [40])

[129] The evidence in this case reveals that:

- (i) JR338 lives in Finaghy 2 SOA which would not have been shortlisted regardless of which method of identifying social deprivation had been used;
- (ii) JR339 lives in Beechwood which would also not have been shortlisted regardless of the chosen method.

[130] These are the two applicants which have advanced claims of Convention-based discrimination on the grounds of religion. As explained in *Taylor*, there is no scope in the HRA for the bringing a Convention claim unless one is directly affected by the alleged breach. Neither of these applicants meets that criterion, nor is there any evidence of a real risk of them being affected by the chosen selection methodology. Their Convention claims must therefore fail.

[131] The third applicant relies on her status as a FSME pupil. She lives in the Upper Springfield 1 SOA which was shortlisted on the criteria adopted by the DE in relation to socio-economic disadvantage. It was, however, not selected as a result of the application of the GCSE attainment criterion.

[132] The unchallenged evidence of the respondent is that if any other criteria had been adopted at the selection stage, including the use of FSME as a sole criterion or other multiple measures of deprivation, this SOA was still not have been selected. This applicant has not therefore been directly affected by the impugned methodology and does not enjoy victim status for the purpose of section 7 HRA. Her Convention right claim must also fail.

[133] Having heard full argument, I will however proceed to consider the merits of the claims.

[134] Article 14 provides:

“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

[135] It is evident therefore that article 14 can only be engaged together with some other ECHR right. In this case, reliance is placed on A2P1 which says:

“No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.”

[136] The applicants also pray in aid article 8:

“Everyone has the right to respect for his private and family life, his home and his correspondence.

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

[137] The Supreme Court judgment in *R (SC) v Secretary of State for Work and Pensions* [2021] UKSC 26 provides the most authoritative analysis of how the domestic courts should approach article 14 claims. The following principles can be derived from SC:

- (i) The alleged discrimination must relate to a matter within the ‘ambit’ of one of the ECHR rights;
- (ii) Only differences in treatment based on an identifiable characteristic or ‘status’ can amount to discrimination for the purposes of article 14;
- (iii) There must be a difference in treatment of persons in analogous situations;
- (iv) Such a difference of treatment is discriminatory if it has no objective and reasonable justification; and
- (v) The state enjoys a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment.

[138] The first question to consider therefore is whether the alleged discrimination falls within the ambit of either A2P1 or article 8. ‘Ambit’ is a much wider concept than actual interference with the right protected by the ECHR. There is no suggestion there

that being denied funding by the RAISE programme is itself a breach of A2P1 or article 8.

[139] In *R (Tigere) v Secretary of State for Education* [2015] UKSC 57, it was accepted that the system of eligibility for student loans to fund higher education fell within the scope or ambit of A2P1, since it may ultimately determine whether one can access that form of education.

[140] Whether or not one lives in a locality which benefits from RAISE funding does not, of itself, affect whether one has access to either primary or post-primary education. All schools in Northern Ireland (aside from the small number of independent schools) already benefit from grant funding through the Common Funding Formula which includes the Targeting Social Need element.

[141] RAISE funding is not provided to schools or pupils directly. It is instead targeted at areas and seeks to engage with a range of community groups, voluntary organisations and schools in order to deliver its objectives. It is argued by the respondent therefore that it lacks the necessary connection with A2P1 to satisfy the ambit test.

[142] In *R (ALR) v Chancellor of the Exchequer* [2025] EWHC 1467 (Admin), a judicial review of the decision to place VAT on private school fees, it was claimed that the impugned provisions were incompatible with article 14, when read with A2P1, as they discriminated against children of certain faiths and those with SEN. The court found that the measures challenged “engaged the substance” of A2P1 and therefore article 14 was engaged.

[143] The matter is not straightforward, but I accept, on this broad approach that the RAISE selection methodology engages the substance of A2P1. Whether or not there is sufficient nexus with the right to respect for privacy and family life in article 8 is therefore academic.

[144] The first and second applicants say that they are being treated differently on the grounds of their religion, and also on the basis that they are from Belfast and Derry and therefore disadvantaged. The persons in analogous positions identified are those children who could potentially benefit from the RAISE scheme and who live in other areas or are Protestant.

[145] The third applicant relies on her status as being a FSME pupil and cites as a comparator a FSME pupil in a locality selected for RAISE funding.

[145] The claim of differential treatment on the ground of religious belief must fail for the same reasons as the claim of direct discrimination. The difference in treatment does not arise as a result of the claimed status.

[146] Even if one accepts that FSME could be a status, there is no differential treatment on that ground. The localities selected for funding through the programme have satisfied a variety of criteria to be shortlisted, then either been identified as core SOAs through the GCSE criterion or been identified as neighbouring areas of influence. Whether or not an individual pupil is entitled to free school meals does not impact on any eligibility to RAISE funding.

[147] In terms of justification, Lord Reed explained in *SC* that a wide margin is usually allowed to the state when it comes to general measures of economic or social strategy, the language used by the courts sometimes requiring that such a measure be “manifestly without reasonable foundation”. One need only read the thousands of pages of evidence in this case, the involvement of multiple experts in the educational field and the detail surrounding the development of the methodology to understand that it was not arrived at on a whim. There is, no doubt, scope for debate as to whether a different method would have arrived at either simpler or more effective outcomes but that is very far from saying that the existing scheme has no reasonable foundation.

[148] On the key questions, both as to victim status and as to whether there is a difference in treatment based on a relevant status which does not have an objective and reasonable justification, these article 14 claims cannot succeed.

*(iv) Substantive or outcome irrationality*

[149] Essentially, the applicants argue that the outcomes produced by the methodology result in arbitrariness.

[150] The Supreme Court held in *R (Gallagher Group) v Competition and Markets Authority* [2018] UKSC 25:

“Whatever the position in European law or under other constitutions or jurisdictions, the domestic law of this country does not recognise equal treatment as a distinct principle of administrative law. Consistency, as Lord Bingham said in the passage relied on by the defendant ..., is a ‘generally desirable’ objective, but not an absolute rule.”

[151] In domestic judicial review terms therefore, equality of treatment is an aspect of rational behaviour.

[152] As Scofield J observed in *Re JR264’s Application* [2023] NIKB 68, a case concerning a development proposal for a school closure:

“In this field, there is ample authority that the court’s review on the merits should be one which is light-touch. Where the territory is one in which the decision-maker has

considerable internal expertise and experience, the court will recognise that and the threshold of establishing irrationality in such circumstances will be a high one.”  
(para [63])

[153] The evidence in these cases reveals that the formulation of policy around the RAISE programme was a complex, multi-factorial question which engaged many officials and experts. There is no binary right or wrong answer to how to allocate funding of this level in order to achieve the goals of the programme. What is clear is that the decisions made around RAISE were arrived at following a lengthy process, weighing up the pros and cons of different proposed approaches. This is classically a matter for Ministers, on the advice of officials, and ought only to be the subject of light-touch rationality-based review.

[154] There was nothing irrational about the selection methodology adopted in this case. It sought to address the core issues of socio-economic deprivation and educational underachievement in a particular way through the shortlisting and ranking process. It was never intended to simply select the most deprived areas of Northern Ireland and provide them with educational funding. The policy decision encouraged a Northern Ireland-wide approach, and the creation of localities. This meant that not all the most deprived SOAs would be ultimately selected and necessitated a degree of flexibility in identifying the areas to be included. There were rational reasons for this approach and for the courts to look behind them would be to engage in an impermissible merits-based challenge.

[155] The applicants’ claims do not surmount the significant hurdle of establishing substantive irrationality.

(v) *Procedural or process irrationality*

[156] The primary case advanced by the third applicant is that the DE failed to take into account the report of Ulster University in relation to the FSME indicator published in March 2024 and, in doing so, thereby failed to take into account a material consideration. The UU report did not make any recommendations in relation to the RAISE programme, indeed it recognised that FSME was being used by it in conjunction with other measures.

[157] The evidence reveals that the respondent did take FSME into account as a material consideration since it was one of the seven indicators used to shortlist SOAs, along with other indicators of deprivation. Broadening this range of criteria away from FSME could not be condemned as *Wednesbury* unreasonable.

[158] In the alternative, the applicant says that there has been a breach of the *Tameside* duty to make sufficient inquiry. One need only consider the exhibits to the affidavits in this case, containing as they do countless drafts of policy papers, advice from

relevant stakeholders and experts, the input from the SIB, a plethora of Ministerial submissions and the detailed, complex data which was considered, to realise that this *Tameside* point can have no substance.

[159] This ground of challenge must also fail.

*(vi) Adequacy of reasons*

[160] The methodology adopted by the DE was published on 2 December 2024. It sets out in detail the approach adopted by the DE and the relevant outcomes produced. Included with the published data are all the results across the seven indicators for the 890 SOAs in Northern Ireland. There is also commentary on how the data was used, and details given as to the particular approaches adopted in Belfast and Derry. An invitation is extended to anyone to contact the relevant officials in the DE for further information or support.

[161] It cannot be argued that there was any lack of reasons given for the decisions made around the methodology adopted.

[162] In any event, as Lord Brown observed in *South Bucks District Council v Porter* (No 2) [2004] UKHL 33:

“A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision.” (para [36])

[163] No viable case of substantial prejudice was advanced by any of the applicants in these cases who were able to make their challenges on the basis of the reasons provided by the DE for the methodology adopted.

*Irish Medium*

[164] The third applicant has also advanced a case that the respondent has breached its duty under Article 89 of the Education (Northern Ireland) Order 1998 to encourage and facilitate the development of Irish-medium education.

[165] In fact, Ciarán Catney of Comhairle na Gaelscolíochta, the body established to promote and facilitate the development of Irish-medium education pursuant to the statutory duty, was a member of the SRG. One of the draft policy papers published in September 2023 contains specific proposals made by representatives of the Irish medium sector.

[166] On 24 June 2024 DE officials met with Mr Catney and discussed the potential of the RAISE programme for Irish language schools. Some 22 schools were identified as being likely to be involved in the programme. Further meetings took place on 14

March 2025 and representatives of CnaG have been involved in the development of the Strategic Area Plans.

[167] The Strategic Area Plans for West Belfast, North Belfast, Portadown and Lurgan all include provision for bespoke Irish medium supports.

[168] The claim made with respect to the Irish-medium sector is without any evidential foundation and is therefore dismissed.

### *Cross-cutting initiatives*

[169] There remains a freestanding challenge to the element of the RAISE programme which relates to the CCIs. This was introduced by a proposed late amendment to the Order 53 statement for which the second applicant did not have leave.

[170] The second applicant does not allege that the approach to CCIs is discriminatory, rather the ground of challenge engages the *Padfield* and irrationality arguments. It is said that by opening up eligibility for CCI's to all schools the DE has removed the link between the programme and socio-economic disadvantage and thereby departed from the Fair Start recommendations.

[171] However, it is the respondent's case that socio-economic disadvantage and educational underachievement are to be found to some extent in every school in Northern Ireland. By opening up applications to all schools, the number of children who might benefit from RAISE funding through the CCIs has been broadened. The key will be to evaluate the success of these initiatives rigorously to ensure that the aims of the programme are being achieved.

[172] It cannot be said that the approach adopted is irrational. Again, it was a legitimate policy decision taken by Minister, having considered advice from officials. It was not made within the strictures of a statutory scheme so as to engage the *Padfield* principle.

[173] It is also claimed that this approach deviates from the MOU with Ireland in respect of the Shared Island funding and, in doing so, threatens the continued funding. The respective departmental officials meet on a regular basis through the ADLRB and all are fully sighted on the CCI programmes. There is no suggestion that anyone regards this as a breach of the MOU or that there is any threat to the ongoing funding.

[174] For these reasons, I find that the second applicant has not established an arguable case in relation to the CCIs with a reasonable prospect of success and leave on this ground is refused.

### *Conclusion*



[175] For all these reasons, none of the applicants' grounds of challenge are made out. The applications for judicial review are therefore dismissed.

**ANNEX 1**

**THE 15 CORE SUPER OUTPUT AREAS**

LOCATION	Core SOA
Antrim	Steeple
Ards Peninsula	Millisle 1
Ballymena	Ballee
Belfast	Botanic 2
Carrickfergus	Northland
Coleraine	Ballysally 1
Derry/Londonderry	Altnagelvin 1
Dungannon	Ballysaggart
Enniskillen	Devenish
Limavady	Coolessan
Lisburn	Knockmore 2
Lurgan Craigavon	Court 1
Newry	Ballybot
Newtownabbey	Mossley 2
Portadown	Ballybay

## ANNEX 2

### THE SUPER OUTPUT AREAS INCLUDED AS AREAS OF INFLUENCE

LOCATION	SOA
Antrim	Ballycraigy
Antrim	Farranshane
Antrim	Fountain Hill
Antrim	Greystone
Antrim	Springfarm 2
Ards Peninsula	Donaghadee South 1
Ballymena	Ballykeel
Ballymena	Castle Demesne
Ballymena	Dunclug
Ballymena	Fair Green
Ballymena	Harryville
Ballymena	Moat
Belfast	Ardoyne 1
Belfast	Ardoyne 2
Belfast	Ardoyne 3
Belfast	Ballymacarrett 1
Belfast	Ballymacarrett 2
Belfast	Ballymacarrett 3
Belfast	Blackstaff 1
Belfast	Blackstaff 2
Belfast	Bloomfield 1

Belfast	Bloomfield 3
Belfast	Botanic 3
Belfast	Botanic 4
Belfast	Botanic 5
Belfast	Collin Glen 1
Belfast	Collin Glen 2
Belfast	Collin Glen 3
Belfast	Duncairn 1
Belfast	Duncairn 2
Belfast	Falls 1
Belfast	Falls 2
Belfast	Falls 3
Belfast	New Lodge 1
Belfast	New Lodge 2
Belfast	New Lodge 3
Belfast	Shaftesbury 1
Belfast	Shaftesbury 2
Belfast	Shaftesbury 3
Belfast	Shankill 1
Belfast	Shankill 2
Belfast	The Mount 1
Belfast	The Mount 2
Belfast	Windsor 3
Belfast	Windsor 4
Belfast	Woodstock 1
Belfast	Woodstock 2

Belfast	Woodstock 3
Belfast	Woodvale 1
Belfast	Woodvale 2
Belfast	Woodvale 3
Carrickfergus	Clipperstown
Carrickfergus	Gortalee
Carrickfergus	Killycrot
Carrickfergus	Love Lane
Carrickfergus	Milebush
Carrickfergus	Sunnylands
Coleraine	Ballysally 2
Coleraine	Central
Coleraine	Churchland
Coleraine	Cross Glebe
Coleraine	University
Derry/Londonderry	Carn Hill 1
Derry/Londonderry	Carn Hill 2
Derry/Londonderry	Creggan Central 1
Derry/Londonderry	Creggan Central 2
Derry/Londonderry	Creggan South
Derry/Londonderry	Culmore 2
Derry/Londonderry	Culmore 3
Derry/Londonderry	Shantallow East
Derry/Londonderry	Shantallow West 1
Derry/Londonderry	Shantallow West 2
Derry/Londonderry	Shantallow West 3

Derry/Londonderry	Shantallow West 4
Dungannon	Coalisland South
Dungannon	Drumglass
Enniskillen	Castlecoole 1
Enniskillen	Erne
Enniskillen	Irvinestown
Enniskillen	Lisnaskea
Limavady	Enagh 2
Limavady	Greystone
Lisburn	Ballymacoss 1
Lisburn	Ballymacoss 2
Lisburn	Hilden 1
Lisburn	Hilden 2
Lisburn	Hillhall 1
Lisburn	Lagan Valley 1
Lisburn	Lambeg 2
Lisburn	Old Warren
Lisburn	Tonagh
Lurgan Craigavon	Church
Lurgan Craigavon	Court 2
Lurgan Craigavon	Drumgask 1
Lurgan Craigavon	Drumgask 2
Lurgan Craigavon	Drumgor 1
Lurgan Craigavon	Drumgor 2
Lurgan Craigavon	Drumnamoe 1
Lurgan Craigavon	Drumnamoe 2

Lurgan Craigavon	Mourneview
Lurgan Craigavon	Woodville 1
Newry	Bessbrook
Newry	Daisy Hill 1
Newry	Daisy Hill 2
Newry	Derrymore 1
Newry	Drumgullion 1
Newry	St Mary's
Newtownabbey	Abbey 1
Newtownabbey	Carnmoney 1
Newtownabbey	Coole
Newtownabbey	Dunanney
Newtownabbey	Monkstown 1
Newtownabbey	Valley 1
Newtownabbey	Valley 2
Newtownabbey	Whitehouse
Portadown	Annagh 2
Portadown	Corcrain 1
Portadown	Corcrain 2
Portadown	Tavanagh